

**TENNESSEE BOARD OF OPTOMETRY
MINUTES**

Date: May 5, 2004

Time: 9:00 a.m., CST

Location: Tennessee Room
Ground Floor, Cordell Hull Building
Nashville, TN 37247

Members Present: Terry Hendrickson, O.D., Chair
Scott Spivey, O.D., Vice Chair
Jerry Richt, O.D., Secretary
Eddie Abernathy, O.D.
Jeff Foster, O.D.

Members Absent: Brian Browder

Staff Present: Sherry Owens, Board Administrator
Barbara Maxwell, Administrative Director
Nicole Armstrong, Advisory Attorney
Jerry Kosten, Regulations Manager

Dr. Hendrickson, chair, called the meeting to order at 9:00 a.m. A sufficient number of board members were present to constitute a quorum.

Dr. Hendrickson recognized the optometrists who drive in from East and West Tennessee and acknowledged his appreciation of their efforts to attend board meetings.

Review Minutes

Upon review of the February 11, 2004 minutes, Dr. Abernathy made a motion, seconded by Dr. Spivey to approve the minutes as written. The motion carried.

Report from Nicole Armstrong, Advisory Attorney

Ms. Armstrong discussed the conflict of interest policy with the board and asked all board members to inform her or the litigating attorney if they had any prior knowledge of a case coming before the board.

Ms. Armstrong said there are three complaints in the Office of General Counsel pertaining to the Board of Optometry although there are no cases scheduled for the meeting today.

Ms. Armstrong said Mr. Kosten, Regulations Manager, will discuss the rules under review when he gives his report.

Ms. Armstrong discussed the 2004 OGC Board Summary Report which is an overview of the number of open, new and closed cases for all Health Related Boards. Ms. Armstrong said the Optometry Board has a small amount of cases compared to the other boards.

Ms. Armstrong said she expects to receive a reply this month to the opinion the board voted to submit to the Attorney General's Office regarding cosmetic contact lenses. Ms. Armstrong said she will send a copy of the reply to all board members and place it on the agenda for the next meeting.

Ms. Armstrong stated she has not received any updated information regarding the Contact Lens Consumer Act which is federal legislation. Ms. Armstrong said if the bill passes it will be a while before rules are enacted to address the regulation of cosmetic contact lenses.

Mr. Abernathy asked how the bill will affect the board if it passes.

Ms. Bell said if it passes the board will be able to regulate contact lens.

Investigative Report

Ms. Phelps stated she was giving the Investigative Report in Ms. Moran's absence. Ms. Phelps discussed the report stating three new complaints have been received and four have been closed. Ms. Phelps said one was closed with no action and three with letters of concern, leaving four complaints in Investigations. Ms. Phelps stated of the four complaints three are classified as other which could be continuing education or advertising.

Disciplinary Report

Ms. Phelps reviewed the disciplinary report with the board stating there are currently three practitioners who are being monitored. Ms. Phelps said if someone fails to comply with the disciplinary action another complaint will be filed and that person(s) must come before the board.

Ms. Phelps also reviewed the discipline summary which lists all practitioners who have been disciplined by the board since 1990.

Financial Report

Ms. Bell stated the board has a \$15,000 deficit caused by the Lens Crafter's case. Ms. Bell said she didn't know if there will be any other fees associated with that case but the deficit should improve by next year.

Dr. Richt stated that on the web site it indicates the majority of the board's revenue is spent on licensure and only \$20,000 for legal fees and asked if that could be corrected. Ms. Bell said she would see if that can be changed on the web site.

Administrative Report

Ms. Owens discussed the administrative report with the board stating there are 1070 actively licensed optometrists, 692 retired and 395 failed to renew. Ms. Owens said the large number of failed to renew licensees is due to address changes not being submitted to the board.

Ms. Owens said between February 6 and April 26, 2004, 108 optometrists have renewed their licenses but only 9 renewed online. Ms. Owens encourages all board members and practitioners to renew their licenses on line.

Ms. Owens asked the board members to submit requests for travel as soon as the information is received to assure there is adequate time to get the request reviewed and approved.

Ms. Owens stated a 25% continuing education audit was conducted for the board and asked if the board would like to select a member to review the audit or use a board consultant.

Dr. Hendrickson said he would like to use a consultant to review the audit and let the board handle the violators. Ms. Owens said the violators must pay a \$100 penalty and make up the missed hours.

Ms. Owens said the issue of the August 2004 board meeting will be discussed after Mr. Kosten's report.

Report from Jerry Kosten, Rules Manager

Mr. Kosten discussed the rulemaking hearing conducted April 16, 2004 to amend the fees, the rules requiring optometrists to comply with all federal statutes and regulations regarding release of verified contact lens prescriptions, and regulation of optometric records.

Upon discussion, Dr. Foster made a motion, seconded by Dr. Abernathy, to approve the amendments as written. A roll call vote was conducted and all board members voted in the affirmative.

Policy Statement

The board reviewed a draft of the policy statement regarding contact lenses to be placed at the board's web site under "Policy Statements."

Ms. Armstrong said a citation of the law and link to the federal law can be added to the policy statement.

Upon discussion, Ms. Armstrong said the changes would be made and added to the agenda for the next meeting for adoption.

August Board Meeting

Ms. Owens said she is submitting the board's travel requests and request to conduct the board meeting in Chattanooga, Tennessee on August 20, 2004.

Dr. Hendrickson said the Tennessee Optometric Association will provide a meeting room and booth space, if staff could attend and provide copies of the rules, statutes and policy statements for the booth.

Ms. Bell said that she, Ms. Armstrong and Ms. Maxwell will attend the meeting and staff the booth.

Dr. Hendrickson asked the board members to review the rules and determine if they want to include definitions and scope of practice in the rules. Dr. Hendrickson asked Ms. Owens to put this on the agenda for the next meeting.

Status Report

Ms. Owens stated there are three reinstatements and three newly licensed practitioners to ratify along with one file to close, one to license and one request for waiver of part 3 of the examination.

Dr. Abernathy made a motion, seconded by Dr. Spivey, to approve the newly licensed, reinstated and retired. The motion carried.

Dr. Richt asked if the criminal background check passed. Ms. Armstrong said the bill is in the House Judiciary Committee. Ms. Bell said the bill may have to go to the Finance Ways and Means Committee but that there is no fiscal note because its an applicant fee and not a state fee. Ms. Bell stated if the bill passed this year she would bring it before the board to adopt fees.

The board discussed Dr. Richt attend the ARBO meeting and Ms. Owens asked Dr. Richt to submit the paperwork to her as soon as possible to submit a travel request.

Ratify Applications

Upon review, Dr. Spivey made a motion, seconded by Dr. Richt, to ratify the following newly licensed optometrists:

Dawn-Marie Knight
Matthew M. Marsich
Chung Yong Song

The motion carried.

Dr. Foster made a motion, seconded by Dr. Abernathy, to ratify the following reinstated optometrists:

Jennifer K. Bulmann
Erwin A. Quirand
David L. Smith

The motion carried.

Correspondence

Dr. Abernathy made a motion, seconded by Dr. Spivey, to approve **Helen Abdelmalak's** request to administer injectables medications as she has met the coursework requirements. The motion carried.

Ms. Owens stated that Cigna Health responded to Dr. Richt's letter, requested by Dr. Choat, stating pachymetry is covered under the board's scope of practice and are reimbursing Dr. Choat.

File Review

Upon review of the application and request by **Robert Dunphy, O.D.** for a waiver of Part 3 of the National Board examinations, Dr. Richt made a motion, seconded by Dr. Spivey, to approve his licensure pending receipt of his 24/6. The motion carried. Dr. Richt said if Dr. Dunphy chooses to take Part 3 he will still have to complete 24/6.

Upon review of the application by **Allen R. Adkins, O.D.**, Dr. Richt made a motion, seconded by Dr. Abernathy, to close the file.

Upon review of the application by **Dorothy Hitchmoth, O.D.**, Dr. Richt made a motion, seconded by Dr. Spivey, to approve her application for licensure. The motion carried.

Other board business

Dr. Hendrickson asked if there were any more board business to conduct.

Dr. Richt asked if the board cannot conduct the board meeting in Chattanooga what are the other alternatives.

Ms. Owens said the board could meet at the end of August if not approved to meet in Chattanooga.

With no other business to conduct, Dr. Spivey made a motion, seconded by Dr. Richt, to adjourn the board meeting at 11:20 a.m. The motion carried.

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